

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

THOMAS A. SUDAK,

Plaintiff,

CIVIL ACTION NO. 10-14115

v.

DISTRICT JUDGE SEAN F. COX

COMMISSIONER OF  
SOCIAL SECURITY,

MAGISTRATE JUDGE MARK A. RANDON

Defendant.

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**REPORT AND RECOMMENDATION FOR  
DISMISSAL FOR FAILURE TIMELY EFFECTUATE SERVICE**

This matter is before the Court on a complaint for judicial review following an adverse decision of the Commissioner of Social Security (Dkt. 1). The complaint was filed on October 13, 2010 and referred to the undersigned for all pretrial purposes (Dkt. 4). An earlier review of the record in this matter indicated that there has been no return of service of the summons and complaint on Defendant. On April 7, 2011, the Court issued an order to show cause why a report and recommendation to dismiss this matter for failure to effect timely service of process should not be issued (Dkt. 11). Plaintiff was given until April 22, 2011 to respond to the order to show cause and cautioned that failure to comply with the order to show cause would result in a report and recommendation for dismissal based failure to effect service within the time specified (Dkt. 11). Plaintiff failed to respond to the Court's show cause order.

**ANALYSIS**

Federal Rule of Civil Procedure 4(m) provides that if service is not effectuated within 120 days the Court must dismiss the action without prejudice as to that defendant. "Absent a showing

of good cause to justify a failure to effect timely service, the Federal Rules of Civil Procedure compel dismissal.” *Byrd v. Stone*, 94 F.3d 217, 219 (6th Cir. 1996), citing, *Habib v. General Motors Corp.*, 15 F.3d 72, 73 (6th Cir. 1994). It is Plaintiff’s burden to establish good cause for failing to timely effect service. *Habib*, 15 F.3d at 73. Further, Local Rule 41.2 provides that if the parties have not taken action within a reasonable time, the Court may enter an order dismissing the case for lack of prosecution.

Plaintiff failed to serve the summons and complaint after being warned that failure to do so could result in dismissal. Therefore, the undersigned recommends that Plaintiff’s complaint be dismissed without prejudice pursuant to Rule 4(m) and Local Rule 41.2. *See Habib*, 15 F.3d at 73 (“Absent a showing of good cause to justify a failure to effect timely service, the Federal Rules of Civil Procedure compel dismissal.”).

### **CONCLUSION**

Based on the foregoing, the undersigned **RECOMMENDS** that Plaintiff’s complaint be **DISMISSED** without prejudice pursuant to Rule 4(m) and Local Rule 41.2.

The parties to this action may object to and seek review of this Report and Recommendation, but are required to file any objections within 14 days of service, as provided for in Federal Rule of Civil Procedure 72(b)(2) and Local Rule 72.1(d). Failure to file specific objections constitutes a waiver of any further right of appeal. *See Thomas v. Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985); *Howard v. Sec’y of Health and Human Servs.*, 932 F.2d 505 (6th Cir.1981). Filing objections that raise some issues but fail to raise others with specificity will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec’y of Health and Human Servs.*, 931 F.2d 390, 401 (6th Cir.1991); *Smith v. Detroit Fed’n of Teachers Local 231*, 829

F.2d 1370, 1373 (6th Cir.1987). Pursuant to Local Rule 72.1(d)(2), any objections must be served on this Magistrate Judge.

s/Mark A. Randon  
MARK A. RANDON  
UNITED STATES MAGISTRATE JUDGE

Dated: April 29, 2011

CERTIFICATE OF SERVICE

*I hereby certify that a copy of the foregoing document was served on the attorneys and/or parties of record by electronic means or U.S. Mail on April 29, 2011.*

S/Melody R. Miles  
Case Manager to Magistrate Judge Mark A. Randon  
(313) 234-5542

***Copy mailed to:***

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